

**Fair Political Practices Commission**  
**MEMORANDUM**

**To:** Chairman Johnson, Commissioners Hodson, Huguenin, Leidigh and Remy

**From:** Lawrence T. Woodlock, Senior Commission Counsel  
Scott Hallabrin, General Counsel

**Subject:** Prenotice Regulation 18530.31, Construing Government Code Section 85303.

**Date:** August 30, 2007

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Proposed Commission Action and Staff Recommendation: Approve publication of notice for adoption of Regulation 18530.31 at the November meeting.

Reason for Proposal: The Commission recently considered an interpretation of Government Code Section 85303 and Regulation 18215(c)(16) that would categorically exempt sponsors' payments of committee fundraising costs from contribution limits set by Section 85303. The Commission declined to reverse staff advice on the application of Regulation 18215(c)(16) to fundraising costs, and approved an advice letter on the subject (the *Bell* Advice Letter, No. I-06-071a). The Commission recognized that Regulation 18215(c)(16), adopted in the wake of Proposition 208, may have outlived its usefulness and that, in any event, a regulation interpreting Section 85303 should be developed.

Section 85303(a) and (b) limit contributions made to or used by committees "for the purpose of making contributions to candidates for elective state office." Subdivision (c) adds a proviso:

"Except as provided in Section 85310, nothing in this chapter shall limit a person's contributions to a committee or political party committee *provided the contributions are used for purposes other than making contributions to candidates for elective state office.*" (Emphasis added.)

The critical challenge presented by this statute is identifying contributions that are made or used "for the purpose of making contributions to candidates for elective state office." The substantive provisions of the draft regulation begin in subdivision (a) with an obvious point on the statute's scope – committees subject to the statute do not include those with separate contribution limits specified by Sections 85301 and 85302. The regulation explains in subdivision (b) the circumstances under which a donor *makes* a contribution for the purpose of making contributions to a candidate for elective state office. Subdivision (c) then defines contributions that are *used* by the committee for the purpose of making contributions to a candidate for elective state office.

Under the draft regulation, both the donor and the recipient would be liable for a violation of Section 85303 for an over-limit contribution intended by the donor to be used to make contributions to candidates for elective state office, if and when the funds are used for that purpose by the committee. On the other hand, if the donor of an over-limit contribution does not intend that

the funds be used to make a contribution to a candidate for elective state office, but the committee actually uses the funds for that purpose, the committee – but not the donor – is liable for a violation of Section 85303. Subdivision (d) emphasizes that, regardless of donor intent, neither the donor nor the recipient violates Section 85303 if the contribution is *not* used to make a contribution to a candidate for elective state office. In other words, “no harm, no foul.”

Subdivision (d) goes on to present common examples of contributions that are *not* “used” by a committee for purposes to which contribution limits apply.

Subdivision (e) states a general rule requiring payment of fundraising costs from the committee’s “all-purpose” bank account – whose funds are contributed under the limits of Section 85303 – to the extent that the fundraising proceeds are used to make a contribution to a candidate for elective state office. Subdivision (f) prescribes acceptable methods for allocating the costs of fundraising when the proceeds are used *in part* to make a contribution to a candidate for elective state office, as well as for other purposes not subject to the contribution limits of Section 85303.

Subdivision (g) lists costs that might be attributable to fundraising activities, but which staff believes could reasonably be exempted from a requirement that they be paid from a committee’s “all-purpose” bank account. The regulation ends with an express recordkeeping provision in subdivision (h) that is intended to facilitate compliance and audits.

Comments: Staff believes that persons who contribute to or administer committee fundraising activities act to further the purpose for which the funds are raised, and are properly said to have adopted that purpose as their own. To argue otherwise – that donors contribute without regard to the known purpose of a fundraiser, or that the committee acts without regard to the fundraiser’s ultimate purpose, seems absurd on its face, and does nothing to further the interests served by the limits on contributions to candidates for elective state office. The regulation thus provides that, if a person contributes to a committee fundraiser knowing that the proceeds will be used to make a contribution to a candidate for elective state office, or if a person disburses the proceeds of a fundraiser to the same end, they “make” or “use” contributions for the purpose of making a contribution to a candidate for elective state office.

Donors are subject to the limits of Section 85303 if they know their contributions will be used to pay the costs of a fundraiser held for the purpose of making a contribution to a candidate for elective state office. Their contributions must be placed in an “all-purpose” account established under Regulation 18534. But regardless of donor intent, the committee itself is charged under subdivision (c)(3) with the purpose exhibited by the distribution of fundraising proceeds. If the proceeds are used to make a contribution to a candidate for elective state office, the committee must pay the costs of the fundraiser from its “all-purpose” account to the extent that it is *using* contributions for the purpose of making a contribution to a candidate for elective state office.